**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 3668 of 2007**
**To**
**FIRST APPEAL No. 3679 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**THE SPECIAL LAND ACQUISITION OFFICER & 2 - Appellant(s)**
**Versus**
**BALUBHAI BECHARBHAI - Defendant(s)**

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**Appearance :**
MR SUNIT S SHAH, GOVT. PLEADER for appellants in First Appeal Nos. 3668 to 3673 of 2007

MS.REETA CHANDARANA, AGP for Appellants in First Appeal Nos. 3674 to 3679 of 2007.
MR YN RAVANI, for respondent/s

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 30/07/2007**

**COMMON ORAL JUDGMENT**

1. The appeals are admitted. Mr.Y.N.Ravani, learned advocate for the respondent/s waive service of notice of admission. Hence, with the consent of the parties, these appeals are taken up for final disposal.

2. The Special Land Acquisition Officer, Narmada Yojna, Bharuch; the State of Gujarat, and the Executive Engineer, Narmada Yojna, Bharuch have filed these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Civil Procedure Code, 1908, against the common judgment and award dated 5th May 2006 passed by the learned Addl. District Judge, Fast Track Court No.4, Bharuch, in Land Acquisition Reference Nos.2467 to 2478 of 1998. The learned Judge by his impugned judgment was pleased to accept the reference partly and further directed that the claimants are entitled to Rs.37.50 per sq.mtr. additional compensation over and above Rs.2.73 per sq.mtr. awarded by the Land Acquisition Officer. Thus, the learned Judge has awarded Rs.37.50 + Rs.1.82 = Rs.39.32 per sq.mtr. The learned Judge has also awarded solatium and interest as per the provisions of the Act.

3. A proposal was made by the Executive Engineer, Narmada Yojana, Canal Distribution Division No.34, Bharuch, to the State Government to acquire agricultural lands of village Bherasam, Taluka Vagra, Dist.Bharuch, for the public purpose of Bherasam Minor-3 (M-9) Canal under Narmada Project. On perusal

of the said proposal, the Government was satisfied that the lands of village Bherasam mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act which provides publication of preliminary notification and power of officers therein was issued on 30.11.1995, which was published in the Official Gazette on the same day. Thereafter, necessary inquiry under Section 5 of the Act was made and a report, as contemplated by Section 5-A(2) of the Act which provides hearing of objections, was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Bherasam specified in the notification published under Section 4 of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, the Government was pleased to issue notification under Section 6 of the Act which provides declaration that the land requires for public purpose on 8.8.1996 and which was published in the Official Gazette on the same day. The interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.60/- per sq.mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated 31.12.1996 offered compensation to the claimants at the rate of Rs.2.73 per sq.mtr. under

Section 11 of the Act. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act which provides for reference to Courts requiring the Special Land Acquisition Officer to refer to their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, where they were numbered as Land Acquisition Reference Nos.2467 to 2478 of 1998.

4. On behalf of the claimants, the claimant of Land Reference Case No.2471 of 1998, Nimeshbhai Ravjibhai Patel was examined at Exh.31. Another witness Omprakash Dahyabhai was examined at Exh.34. Except that, the claimants have not led any evidence.

4.1 Chimanbhai Kesurbhai Patel has deposed that as per the compensation case No.35/96, Block No.446 admeasuring 0 Are 03 - 04 sq.mtr. of land was acquired, and as far as that land is concerned, there are other neighbouring lands having Block Nos.398, 445, 444,453, 450, 456, 459,, 457, 422-B, 466, and 463. All these lands were also acquired by State Govt. being the Compensation Case No.35 of 1996. He has seen those lands in this behalf. He is also aware about the claimants. As far as those lands are concerned, the Land Acquisition Officer has passed the award of Rs.2.73 per sq.mtr. According to him, the said compensation is very meagre amount and

therefore they were constrained to file these reference applications in this behalf.

4.2 Before the Reference Court, they have claimed Rs.60/- per sq.mtr. He has stated that all these lands are adjoining to each other, all these lands are fertile lands, and the claimants have grown lot of crops. The quality and quantity of lands is also good. They are carrying agricultural activities with modern equipments and they are getting good crops in the said lands. They have also produced the documentary evidence which is produced at Exhs.12 to 24 for the years from 1993 to 2003-2004. He has also produced the revenue record of the said lands. He has stated that as regards cotton crop is concerned, they were able to get 20 quintals per acre and for the year 1994-95, the price per quintal was Rs.2,221/-. For proving the rate of cotton crop, he has produced the evidence from the Agriculture Produce Market Committee, Bharuch from Exh.25 onwards. Out of the said agricultural operations from cotton crop, they used to earn early Rs.44,420/-. Out of that expenses, if 35% has been deducted, then they were able to get Rs.28,875/- per acre as agricultural income in this behalf. He has also stated that as regards Tuver Dal is concerned, they used to get three crops in the year. Out of that, they used to get 40 quintal of Tuver Dal. He has stated that the price of Tuver Dal for the year 1994-95 was Rs.1,435/- per quintal for two green crops and for the remaining one dried crop, they used to get Rs.1,660/- per quintal. Considering

this, they were getting 17,220/- and after deducting the expenses, they were getting Rs.48,500/- and in all they used to get Rs.38,700/- per acre. He has further stated that all lands acquired were all fertile lands and they have produced the revenue record at Exh.26. He has further stated that near the lands, there is a well of one Shri Piyushbhai Bhagwanbhai which is situated at Block No.314 and there is also another well which belongs to Kalavatiben Narsinhbhai which is situated at Block No. 323. They used to get water so that they were able to have good crop in this behalf. They had also installed Diesel Engine in the pond and were also getting more water. He has further stated that there is land of ONGC where Gandhar Oil Field Project which is at 12 k.m. away from their lands and therefore lands are situated in the developed area. He has also stated that there is GIDC Complex also; offices of Government; semi-Government offices, Banks, Schools etc. situated near their lands. All these show that the land has a potential value in this behalf.

4.3 He has also valued the land in question by Valuer Omprakash Dahyabhai and the Valuer has produced the report. He has valued the land in question at Rs.37.50 per sq.mtr. He has stated that as far as land of Vora Sam is concerned, the same is 2 k.m. away from them. He has further stated that as far as lands of villages Bhersam and Vora Sam are concerned, they are adjacent to each other. He has

stated that therefore the claimants are entitled to 10% increase in price every year and also interest as per the provisions of the Act. He has also been cross-examined and he has denied that the compensation given is adequate in this behalf. The claimants have also produced the oral evidence of Omprakash Dahyabhai, who has stated that he is B.Sc.Agriculture and is doing the work of land valuation. His licence was issued by the Ministry of Finance, Delhi. He has stated that he has visited the land on 25.10.2004 and valued the land in question. According to to him, the value of the land is Rs.37.50 per sq.mtr. In his cross examination, he has stated the value of the land; he has seen the fertility of land; development of the village; value of crops and the agriculture equipments in this behalf. He has denied that there is no development in the land of Bhersam and stated that he has made the valuation after going through the documents in this behalf.

4.4 The learned Counsel for the claimants have relied upon the evidence produced by the deponent which I have discussed earlier. Over and above, they have also produced the Map of the village Vagra at Exh.28 and Map of GIDC complex, at Exh.27 to show that there is development in the land. He has relied upon the judgment of the Court in Land Reference Case No.2408 of 1997 of village Vora Sam and has also produced judgment of reference case of village Saran, Land Reference Case No.1462 of 1997. He has stated

that previously the District Court has given additional compensation due to development of the land and in view of the same, the claimants are also entitled to Rs.49/- per sq.mtr.

5. After going through the oral as well as documentary evidence on record, the learned Judge held that the amount of compensation given by the Land Acquisition Officer is inadequate. As regards valuation of the land regarding the adjoining land, the learned Judge has held that as far as village Vora Sam and other villages are 3 k.m. away from the present land in question and therefore, those judgments are not helpful or relevant in this behalf. The learned Judge has also held that the land of village Bhersam is a fertile land, however, as regards the valuation of land of other village is concerned, the said village is not nearby the land in question which is acquired and therefore, the said judgment will not be applicable in the present case. The learned Judge relying upon the report of the Valuer, ultimately awarded the amount of Rs.37.50 per sq.mtr. The learned Judge also granted solatium and interest as per the provisions of the Act.

6. I have heard learned AGP for the appellants and Mr.Y.N.Ravani, learned advocate for the original claimants in each appeal, at length and in great detail. This Court has also considered the paper book supplied by the learned counsels for the claimants, which includes oral as well as documentary evidence

adduced by the parties before the Reference Court. This Court has gone through the judgment of Hon'ble Apex Court in the case of **Special Land Acquisition, Davangere v. P.Veerabhadarappa, etc. etc., reported in AIR 1984 SC 774 (see para 7 on page 777)**, where the Hon'ble Apex Court has laid down that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) and the methods of valuation may be: (1) opinion of experts; (2) the prices paid within a reasonable time in bona fide transaction of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. What is emphasised in the said decision is that normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. For the guidance of courts in the country, it is laid down that yield method can be resorted to only when no other method is available. Applying the principles laid down in the above quoted decision to the facts of the present case, this Court finds that the Reference Court was not justified in determining the market value of the lands acquired on yield basis more particularly when the evidence in the form of previous award of the Reference Court relating to the

lands of village Vagra was available on record. The previous award of the Reference Court relating to the lands of village Vagra is produced by the claimants indicates that the lands of village Vagra were acquired for public purpose of ONGC project pursuant to publication of notification issued under Sec.4 of the Act in the official gazette at the relevant time. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.7/- per sq.mtr. Feeling aggrieved, the claimants had sought references and accordingly, the references were made to the District Court, Bharuch where they were numbered as L.A.R. Nos.1282 of 1990 to 1291 of 1990. In those cases, witness Musabhai Umarji Patel was examined at Exh.96 whereas another witness Hanumanbhai Ishwarbhai Patel was examined at Exh.103 and witness Omprakash Dahyabhai Pandya was examined at Exh.109. Further, the claimants had also examined Raisang Babubhai Makwana at Exh.119 and witness Ramanbhai Punajbai Vankar was examined at Exh.125. On behalf of the Acquiring authorities, witness Parsottambhai Haribhai Chotaliya was examined at Exh.135. On appreciation of the evidence adduced by the parties, the Reference Court by judgment and award dated 10th Jan.2002 awarded additional amount of compensation to the claimants at the rate of Rs.31/- per sq.mtr. Thus, those claimants were awarded compensation at the rate of Rs.38/- per sq.mtr.

7. As observed earlier, it was asserted by witness claimant Kantibhai Bhailalbhai Patel that the lands

of Village Vagra and the lands acquired in the instant cases were situated near each other. It was also claimed by him that the lands acquired from Village Vagra were similar in all respects to the lands acquired in the instant case. This assertion was neither challenged by the Acquiring Authorities nor proved to be untrue. Under the circumstances, this Court is of the opinion that the previous award of the Reference Court relating to the lands of Village Vagra would furnish good guidance for the purpose of determining the market value of the lands acquired in the instant cases from Village Saran. It is well settled that the previous award of the Reference Court relating to the lands of a village, which has attained finality, can be taken into consideration as a good guidance for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. The record further shows that the previous award of the Reference Court relating to the lands of Village Vagra, which was rendered in Land Reference Case Nos.1282 to 1291 of 1990, was subjected to challenge in First Appeal Nos.1942 to 1951 of 2003 and cognate matters and that this Court by judgment (Coram: J.M.Panchal, J. (as he was then) & Abhilasha Kumari, J.) in the matters of Dy.General Manager vs. Heirs of deceased Ratanbhai Karsanbhai decided on 19.6.2006 upheld the same. The fact that the previous award of the Reference Court relating to the lands of Village Vagra has attained finality cannot be disputed by the learned counsel for the appellants. Therefore, the claimants were justified in placing reliance upon the same for the purpose of claiming enhanced

compensation. There is a general consensus between the learned counsels for the parties that on the basis of the previous award relating to the lands of Village Vagra, as confirmed by the High Court, the claimants would be entitled to compensation, in all, at the rate of Rs.40.23/- per square metre. Thus, this Court does not find any merits in the appeals and, therefore, the appeals are liable to be dismissed.

8. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(K.M.Mehta, J.)

*Sreeram.*